IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, Petitioner on Review, v. JUSTIN ALAN LINK, Defendant-Appellant, Respondent on Review.	Deschutes County Circuit Court Case No. 01FE0371AB Court of Appeals Case No. A163518 Supreme Court Case No. S066824

BRIEF OF *AMICI CURIAE* OREGON JUSTICE RESOURCE CENTER AND OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

Review of the Decision of the Court of Appeals
on Appeal from a Judgement of the Circuit Court for Deschutes County
Honorable Alta Jean Brady, Judge

Opinion Filed: April 17, 2019
Author of Opinion: James, Judge.
Before: DeVore, Presiding Judge, and Tookey, Judge, and James, Judge.

(Counsel Listed on Next Page)

February 2020

Ellen Rosenblum, OSB No.753239
Attorney General
Benjamin Gutman, OSB No. 160599
Solicitor General
OREGON DEPARTMENT
OF JUSTICE
1162 Court Street
NE Salem, Oregon 97301
Telephone: 503-378-4402
benjamin.gutman@doj.state.or.us

Attorneys for Petitioner-on-Review
State of Oregon

Ernest Lannet, OSB No. 013248
Chief Defender
Marc D. Brown, OSB No. 030825
Chief Deputy Defender
OFFICE OF PUBLIC DEFENSE
SERVICES
1175 Court Street NE
Salem, Oregon 97301
Telephone: 503-378-3349
marc.d.brown@state.or.us

Attorneys for Respondent-on-Review
Justin Alan Link

Crystal Maloney, OSB No. 164327
165 Court Street, No. 156
Brooklyn, New York 11201
Telephone: 541-646-5130
crystal.s.maloney@gmail.com

Attorney for Amici Curiae
Oregon Justice Resource Center
and Oregon Criminal Defense
Lawyers Association

Sara Kobak, OSB No. 023405
SCHWABE, WILLIAMSON &
WYATT, P.C.
1211 SW 5th Ave., Suite 1900
Portland, Oregon 97204
Telephone: 503-222-9981
skobak@schwabe.com

Attorney for Amicus Curiae
ACLU of Oregon

Kelly Simon, OSB No. 154213
ACLU FOUNDATION OF
OREGON
P.O. Box 40585
Portland, Oregon 97240
Telephone: 503-444-7015
ksimon@aclu-or.org

Attorney for Amicus Curiae
ACLU of Oregon

Steven M. Watt, pro hac vice
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broadway St., 18th Floor
New York, New York 10004
Telephone: 212-519-7870
swatt@aclu.org

Attorney for Amicus Curiae
American Civil Liberties Union
Foundation

Angela Sherbo, OSB No. 824472
Christa Obold Eshleman,
OSB No. 043801
YOUTH, RIGHTS & JUSTICE
1785 NE Sandy Blvd., Suite 300
Portland, Oregon 97232
Telephone: 503-232-2540
sherboangela@gmail.com
christa.oe@youthrightsjustice.org

Attorney for Amicus Curiae
Youth, Rights & Justice

Andy Simrin, OSB No. 914310
ANDY SIMRIN PC
405 NW 18th Avenue
Portland, Oregon 97209
Telephone: 503-265-8940
andysimrin@oregonappeals.net

Attorney for Amicus Curiae
Seth Edwin Koch

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Other Authorities

///

BRIEF IN SUPPORT OF RESPONDENT'S BRIEF ON THE MERITS BY *AMICI CURIAE* OREGON JUSTICE RESOURCE CENTER AND OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

INTEREST OF *AMICI CURIAE*

The Oregon Justice Resource Center (OJRC) is a Portland-based, non-profit organization founded in 2011. The OJRC works to dismantle systemic discrimination in the administration of justice by promoting civil rights and by enhancing the quality of legal representation to traditionally underserved communities. The OJRC serves this mission by focusing on the principle that our criminal justice system should be founded on fairness, accountability, and evidence-based practices. The OJRC Amicus Committee is comprised of Oregon attorneys from multiple disciplines and practice areas.

The Oregon Criminal Defense Lawyers Association (OCDLA) is a non-profit organization based in Eugene, Oregon. OCDLA's 1,291 members are lawyers, investigators, and related professionals dedicated to defending individuals who are accused of crimes. OCDLA serves the defense community by providing continuing legal education, public education, and networking. OCDLA is concerned with legal issues presenting substantial statewide impact to defendants in criminal cases.

Amici wish to be heard by this Court because *amici* agree with defendant-respondent that his sentence to lifetime imprisonment without the possibility of parole for 30 years is unconstitutional.

STATEMENT OF HISTORICAL AND PROCEDURAL FACTS

Amici accepts the state's statement of historical and procedural facts.

QUESTION PRESENTED AND PROPOSED RULES OF LAW

Amici concurs with the respondent's question presented and proposed rules of law.

SUMMARY Of ARGUMENT

The United States Supreme Court has long recognized that juveniles are cognitively and developmentally different than adults, acknowledging developments in psychology and brain science. Scientific research on brain development and psychosocial maturity shows that juveniles are less developed than adults. In fact, human brain development is a protracted series of processes that extends until near the age of 25. Most important to juvenile criminal sentencing, the prefrontal cortex remains underdeveloped through adolescence. And the prefrontal cortex controls the executive brain functions of decision making, impulse control, and emotional regulation. Those lacking functions cause adolescents to lack the capacity to envision long-term consequences and to resist peer pressure.

Because of adolescents' brain development, juvenile lifetime imprisonment sentences, including those that allow eligibility for parole after 30 years, fail to serve the purposes of punishment. Specifically, such sentences do not further the

causes of defendant rehabilitation or public protection. Long-term imprisonment of juveniles works against rehabilitation, because prisons are inherently stressful environments that can negatively alter neural systems, especially those of developing brains. Furthermore, it is well documented that juveniles "age out of crime," likely meaning their risk-taking behavior ceases when their brains are fully developed. Therefore, a juvenile's prison sentence will also cease to serve the purpose of public protection when the juvenile matures into adulthood.

In light of the science of juvenile brain development, this court should hold that juvenile lifetime imprisonment sentences, including those with the possibility of parole after 30 years of imprisonment, are unconstitutional under Article I, section 16, of the Oregon Constitution and under the Eighth Amendment to the United States Constitution.

ARGUMENT

I. The United States Supreme Court has long recognized that juveniles are cognitively and developmentally different than adults.

The premise that youths, by their very nature, are different—what Justice Anthony Kennedy described as what "any parent knows"—is central to the United States Supreme Court's decisions excluding juveniles from the harshest sentencing outcomes. *Roper v. Simmons*, 543 US 551, 569, 125 S Ct 1183, 161 L Ed 2d 1 (2005). From *Roper* through more recent decisions in *Graham v. Florida*, 560 US 48, 130 S Ct 2011, 176 L Ed 2d 825 (2010), *Miller v. Alabama*, 567 US 460, 132 S

Ct 2455, 183 L Ed 2d 407 (2012), and *Montgomery v. Louisiana*, 577 US __, 136 S Ct 718, 193 L Ed 2d 599 (2016), the Court acknowledges the growing scientific consensus regarding juvenile brain development by constitutionally banning the use of capital punishment for juveniles (*Roper*), limiting life-without-parole sentences to homicide offenders (*Graham*), and banning the use of mandatory life-without-parole sentences (*Miller*) and then applying that decision retroactively (*Montgomery*).

In *Miller*, the Court recognized that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds" and that "[i]t is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance." *Miller*, 567 US at 471-72 and n 5 (internal quotation marks and citation omitted). These recognized characteristics—youthful transient rashness, an inability to assess consequences, and the juvenile penchant for risk-taking—lessens a juvenile's moral culpability as well as "enhance[s] the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed." *Id.* at 472 (internal quotation marks and citation omitted).

It is worth noting that the Court considers society consensus, including legislative action, sentencing practices, and the speed with which the country rejects punishment, as part of its inquiry regarding whether punishment practice

comports with the Constitution. *Atkins v. Virginia*, 536 US 304, 311-12, 122 S Ct 2242, 153 L Ed 2d 335 (2002); *Graham v. Florida*, 560 US 48, 62, 130 S Ct 2011, 176 L Ed 2d 825 (2010); *Kennedy v. Louisiana*, 554 US 407, 433, 419, 128 S Ct 2641, 171 L Ed 2d 525 (2007). That suggests that the trend in society's opinion reflects that of the Court.

II. Scientific research on brain development and psychosocial maturity shows that juveniles are fundamentally less developed than adults.

Neuroscientists continue to accumulate ample evidence that the adolescent brain is not fully developed in many critical respects. By now, "[t]here is incontrovertible evidence of significant changes in brain structure and function during adolescence," and, "[a]lthough most of this work has appeared just in the last 10 years, there is already strong consensus among developmental neuroscientists about the nature" of these changes. Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 Am Psychologist 739, 742 (2009).

a. Human brain development is a protracted series of processes that extends until near the age of 25.

Human brain development is "characterized as a complex series of dynamic and adaptive processes that operate throughout the course of development to promote the emergence and differentiation of new neural structures and functions." Joan Stiles & Terry L. Jernigan, *The Basics of Brain Development*, 20 Neuropsychology Rev 327, 328 (2010). These processes "range from the

molecular events of gene expression to environmental input" and "operate within a highly constrained and genetically organized, but constantly changing context, that over time, support the emergence of the complex and dynamic structure of the human brain." *Id*. Human brain development begins in the third gestational week. *Id*. Then it is not complete until near the age of 25, when the prefrontal cortex reaches maturation. Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease and Treatment 449, 453 (2013).

b. The prefrontal cortex is still under development in adolescence, which affects several executive brain functions, including decision making, impulse control, and emotional regulation.

The prefrontal cortex is part of the brain's frontal lobes and "offers an individual the capacity to exercise good judgment when presented with difficult situations." Arain, *supra*, at 453. It governs several "executive brain functions," including mentally focusing; organizing thoughts, solving problems, forming strategies, and planning; simultaneously considering multiple sources of information; considering the future and making predictions; balancing short-term rewards with long-term goals; foreseeing and weighing the possible consequences of behavior; modulating intense emotions; inhibiting inappropriate behavior and initiating appropriate behavior; and adjusting behavior when situations change. *Id*.; Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During*

Postadolescent Brain Maturation, 21 J Neurosci 8819 (2001).[1] In general, the prefrontal cortex is associated with decision-making. It is integral to judging and properly appraising the future consequences of one's actions, recognizing deception, responding to positive and negative feedback, remembering, and making moral judgments. *See* Samantha B. Wright et al., *Neural Correlates of Fluid Reasoning in Children and Adults*, 1:8 Frontiers Human Neurosci 1, 7 (2008)

[1] *See also* Eveline A. Crone et al., *Neurocognitive Development of Relational Reasoning*, 12:1 Developmental Sci 55, 56 (2009) (explaining that "[n]europsychological and neuroimaging studies have shown that prefrontal cortex is strongly implicated in relational reasoning."); Michael S. Gazzaniga et al., *Cognitive Neuroscience: The Biology of the Mind* at 75 n 37 (2d ed 2002); Isabelle M. Rosso et al., *Cognitive and Emotional Components of Frontal Lobe Functioning in Childhood and Adolescence*, 1021 Annals NY Acad Sci 355, 360-61 n 29 (2004) (finding a correlation between frontal lobe development in adolescents, response inhibition and social anxiety levels); Silvia A. Bunge et al., *Immature Frontal Lobe Contributions to Cognitive Control in Children: Evidence from fMRI*, 33 Neuron 301 (2002); B.J. Casey et al., *Structural and Functional Brain Development and Its Relation to Cognitive Development*, 54 Biological Psychol 241, 244 (2000); R. Dias et al., *Dissociable Forms of Inhibitory Control Within Prefrontal Cortex with an Analog of the Wisconsin Card Sort Test: Restriction to Novel Situations and Independence from "On Line" Processing*, 17 J Neurosci 9285 (1997); Sarah Durston & B.J. Casey, *What Have We Learned About Cognitive Development from Neuroimaging?*, 44 Neuropsychologia 2149, 1016 n 37 (2006); Deborah Yurgelun Todd, *Emotional and Cognitive Changes During Adolescence*, 17 Current Opinion in Neurobiology 251, 253 n 7 (2007); Facundo Manes et al., *Decision-Making Processes Following Damage to the Prefrontal Cortex*, 125 Brain 624 (2002); J. O'Doherty et al., *Abstract Reward and Punishment Representations in the Human Orbitofrontal Cortex*, 4 Nature Neurosci 95 (2001); Robert D. Rogers et al., *Choosing Between Small, Likely Rewards and large, Unlikely Rewards Activates Inferior and Orbital Prefrontal Cortex*, 20 J Neurosci 9029 (1999); Antoine Bechara et al., *Characterization of the Decision Making Deficit of Patients with Ventromedial Prefrontal Cortex Lesions*, 123 Brain 2189, 2198-99 (2000).

(finding that important changes in the prefrontal cortex during adolescence lead to the development of logical reasoning abilities).[2]

The prefrontal cortex is one of the last regions to mature. Gogtay & Nitin et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proc Nat'l Acad Sci 8174, 860 n 42 (2004).[3] While the prefrontal cortex is still developing, adolescents rely heavily on the emotional regions of their brain's limbic system. Arain, *supra*, at 453. Located deep within the cerebrum, the limbic system is made up of the amygdala, the hippocampus, and the hypothalamus. *Id*. This part of the brain is involved in the expression of emotions and motivations related to survival, such as fear, anger, and fight-or-flight response. *Id*. The limbic system also "regulates functions related to memory storage and retrieval of events that invoke a strong emotional response." *Id*.

---

[2] *See also* D. D. Langleben et al., *Brain Activity During Simulated Deception: An Event-Related Functional Magnetic Resonance Study*, 15 Neuroimage 727 (2002); R. Elliot et al., *Differential Neural Response to Positive and Negative Feedback in Planning and Guessing Tasks*, 35 Neuropsychologia 1395 (1997); Beatriz Luna, "The Maturation of Cognitive Control and the Adolescent Brain," *From Attention to Goal-Directed Behavior* (Francisco Aboitiz and Diego Cosmelli eds, Springer Berlin Heidelberg 2009); Jorge Moll et al., *Frontopolar and Anterior Temporal Cortex Activation in a Moral Judgment Task: Preliminary Functional MRI Results in Normal Subjects*, 59 Arq Neuropsiquiatr 657 (2001); Steve W. Anderson et al., *Impairment of Social and Moral Behavior Related to Early Damage in Human Prefrontal Cortex*, 2 Nature Neurosci 1032 (1999).

[3] *See also* Kenneth E. Towbin & John E. Schowalter, *Adolescent Development*, Psychiatry 145, 151-52 (Allan Tasman ed, 2d ed 2003) (recognizing the link between "improvement during adolescence in specific cognitive skills such as organizing information, conceptualization, perspective taking, and social perception, to structural changes in frontal cortical and subcortical structures").

Thus, adolescents' prefrontal cortices "are used less often during interpersonal interactions and decision making than their adult counterparts." *Id*. *See* Steven Petersen et al., *Functional Brain Networks Develop from a "Local to Distributed" Organization*, 5:5 PLOS Computational Biology 1, 8 (2009) (noting that increased connectivity "promote[s] interactions between brain regions * * * allowing for a more effective 'solution' to any particular set of processing demands"). And neuroimaging studies have found that adolescents are more likely than adults to be swayed by their emotions when interacting with others and making decisions. Arain, *supra*, at 453.

c. Adolescents lack capacity to envision long-term consequences and to resist peer pressure.

New perspectives in psychosocial development examining "adolescent 'cognition-in-context' emphasize that adolescent thinking in everyday settings is a function of social and emotional, as well as cognitive, processes, and that a full account of youthful judgment must examine the interaction of all of these influences." Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Annual Review of Clinical Psychology 47, 56 (2009). Research indicates that psychosocial development proceeds slower than cognitive development. *Id*. This means that "[e]ven when adolescent cognitive capacity approximate those of adults, youthful decision making may still differ from that of adults due to psychosocial immaturity." *Id*.

Juveniles lack the full capacity to envision future consequences of their actions, particularly in the face of poor environmental situations or under peer pressure. *Id*. The ability to withstand external pressures is a crucial component of emotional and social maturity, and it is necessary to make reasoned and mature decisions. The United States Supreme Court has recognized that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Roper*, 543 US at 569.

Juveniles' capacity to envision the long-term consequences of their actions are affected by their weaker orientation to the future as well as their attitudes and perception of risks. Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am Psychologist 1009, 1012 (2003). It is well established that adolescents are less future-oriented than adults and become more future-oriented as they move into adulthood. *Id*. Studies on risk-taking indicate that "adolescents tend to discount the future more than adults do and to weigh more heavily short-term consequences of decisions—both risks and benefits—in making choices." *Id*. Furthermore, "adolescents use a risk-reward calculus that places relatively less weight on risk, in relation to reward, then that used by adults." *Id*.

Because of their developmental immaturity, adolescents are more susceptible than adults to the negative influences of their environment and their

actions are shaped directly by family and peers in ways that adults are not. "Adolescents are dependent on living circumstances of their parents and families and hence are vulnerable to the impact of conditions well beyond their control." Alan Kazdin, *Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths, in* YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE, 33, 47 n 12 (Thomas Grisso & Robert G. Schwartz eds, 2000). Family problems and bad neighborhood conditions are major risk factors for juvenile crime, including homicide. *Id*. at 47-48; *see also* Rolf Loeber & David Farrington, *Young Homicide Offenders and Victims: Risk Factors, Prediction, and Prevention from Childhood*, 61 & tbl 4.1 (2011) (noting the high likelihood that homicide offenders came from either a broken family or bad neighborhoods); Jeffrey Fagan, *Contexts of Choice by Adolescents in Criminal Events*, *in* YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE , 371, 372 n 12, 389-91 (Thomas Grisso & Robert G. Schwartz eds. 2000).

Yet, because of their legal minority, juveniles lack the freedom to remove themselves from those negative external influences. In other words, juveniles lack the control over their circumstances that autonomous adults possess, and that mitigates their blameworthiness for failing to extricate themselves from destructive or "criminogenic" situations. *Roper*, 543 US at 569.

Juveniles are also especially vulnerable to the negative influence of peer pressure and other social factors. Sarah-Jayne Blakemore & Trevor W. Robbins,

Decision Making in the Adolescent Brain, 15 Nature Neuroscience 1184, 1184 (2012). Research has shown that a juvenile's susceptibility to peer pressure and to engage in antisocial behavior increases between childhood and early adolescence, peaking at around age 14, and then declines slowly during late adolescence through the age of 18. Elizabeth Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 38 (2008); Thomas Berndt, *Developmental Changes in Conformity to Peers and Parents*, 15 Developmental Psychol 608, 612, 615-616 (1979); Laurence Steinberg & Susan Silverberg, *The Vicissitudes of Autonomy in Early Adolescence*, 57 Child Dev 841, 848 (1986); Fagan, *supra*, at 371 n 31, 382-84 (discussing coercive effect of social context on adolescents). For instance, one major study documented that exposure to peers during a risk-taking task doubled the amount of risky behavior among mid-adolescents (with a mean age of 14), increased it by 50 percent among college undergraduates (with a mean age of 19), and had no impact at all among young adults. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood*, 41 Developmental Psychol 625, 626-634 (2005). "[T]he presence of peers makes adolescents and youth, but not adults, more likely to take risks and more likely to make risky decisions." *Id*. at 634; *see also* Laurence Steinberg & Kathryn Monahan, *Age Differences in Resistance to Peer Influence*, 43 Developmental Psychol 1531, 1538 (2007) (same).

///

III. Because adolescents' brains are still developing, juvenile lifetime imprisonment sentences, including those where the person is eligible for parole after 30 years of imprisonment, do not serve the purposes of punishment.

a. The purposes of punishment include protecting the public and rehabilitating the defendant.

Under the incapacitation theory of punishment, the purpose of punishment is to protect the public. The rationale for punishment is "that society may protect itself from persons deemed dangerous because of their past criminal conduct by isolating these persons from society." Wayne R. LaFave, 1 Subst. Crim. L. § 1.5(a)(2) (3d ed. Oct. 2019 update), *available at* Westlaw. If a person is incarcerated, "he cannot commit further crimes against society." *Id*.

Under the rehabilitation theory of punishment, the purpose of punishment is to rehabilitate the person who committed a crime. Rehabilitation happens through treatment with the goal to "return him to society so reformed that he will not desire or need to commit further crimes." *Id*. at § 1.5(a)(3). This theory of punishment "rests upon the belief that human behavior is the product of antecedent causes, that these causes can be identified, and that on this basis therapeutic measures can be employed to effect changes in the behavior of the person treated." *Id*.

b. Juvenile lifetime imprisonment sentences work against rehabilitation.

Adolescence is a vulnerable period for stress, and studies suggest that "chronic stress can alter neural systems, especially those still developing." Chandni Sheth et al., *Chronic Stress in Adolescents and Its Neurobiological and*

Psychopathological Consequences: An RDoC Perspective, 1 Chronic Stress 1, 3 (2017). Studies have found that "higher cumulative life stress, maltreatment, and physical abuse in adolescents all have been associated with small PFC [prefrontal cortex] volumes." *Id*. at 5. And chronic stress throughout development may significantly alter the structure of the prefrontal cortex. *Id*. Altering the prefrontal cortex "may have functional implications such as reduced top-down control of emotion regulation." *Id*.

Prisons are inherently stressful environments, and adolescent brain development can be altered by chronic stress in ways that work against rehabilitation. Noise, crowding, and sensory deprivation are all aspects of prison conditions that can be stress-inducing. Ernest L. Graves and John E. Hill, *Prison Conditions and Effects in Defense of a Prison Crime Case*, 24 Am. Jur. Trials 55 § 22 (1977, Feb. 2020 update), *available at* Westlaw. In addition to the conditions of confinement, people who are incarcerated are confronted with stressors in their daily interactions. These stressors include interactions with correctional officers, interactions with medical staff, and the fear of volatile interactions with other prisoners. Lauren C. Porter, *Being "on Point": Exploring the Stress-related Experiences of Incarceration*, 9(1) Society and Mental Health 1, 2-3 (2019).

A study of youth incarcerated at Rikers Island, a New York City correctional facility, found that "incarceration was associated with significant declines in specific aspects of executive functioning." Rebecca Umbach et al., *Cognitive*

Decline as a Result of Incarceration and the Effects of a CBT/MT Intervention: A Cluster-Randomized Controlled Trial, 45 Criminal Justice and Behavior 31, 46 (2018). The study of 16-to-18-year-old males focused on the executive functions of cognitive control, emotion regulation, and emotion recognition. *Id*. at 31. The participants completed two computerized "emotional go/no-go tasks" (one baseline and one approximately four months later) to measure the participant's ability to inhibit responses to emotional stimuli. *Id*. at 41. The study found that performance on all outcome variables (cognitive control, emotion regulation, and emotion recognition) significantly declined from the baseline to follow-up tasks. *Id*. at 37. Poor inhibition, low self-control, and impaired emotion regulation are associated with antisocial behavior. *Id*. at 32-33.

Lifetime imprisonment sentences of juveniles, including those in which a person is paroled after 30 years of imprisonment, work against rehabilitation. The stressors inherent to incarceration can alter adolescent brain development and may cause a decline in executive functions that are key to making better decisions.

c. Juvenile lifetime imprisonment sentences do not protect the public.

It is well documented that juveniles "age out of crime," and thus a juvenile's prison sentence will cease to serve the purpose of protecting the public when they mature into adulthood. The correlation between age and crime has been recognized for decades. Michael Rocque et al., *Age and Crime, in* THE

ENCYCLOPEDIA CRIME AND PUNISHMENT (Wesley G. Jennings ed., 2016), *available at* https://onlinelibrary.wiley.com/doi/pdf/10.1002/9781118519639.wbecpx275.

The relationship between age and crime "show that crime increases in early adolescence, around age 14, peaks in the early to mid 20s, and then declines thereafter." *Id*. at 1. And the vast majority youth's criminal activity is limited to adolescence. Steinberg, *Adolescent Development and Juvenile Justice*, *supra*, at 66 (2009). "Dozens of longitudinal studies have shown that the vast majority of adolescents who commit antisocial acts desist from such activity as they mature into adulthood and that only a small percentage—between five and ten percent, according to most studies—become chronic offenders." *Id.*

The relationship between age and crime has become known as the "age-crime curve." Rocque, *supra*, at 2. While the age-crime curve is established, various theoretical approaches have been taken to explain it. *Id*. at 2-6. However, "the age-crime curve is likely a result of a mix of social and biological factors." *Id*. at 6.

Lifetime imprisonment sentences of juveniles, including those where the person is paroled after 30 years of imprisonment, do not serve the purpose of protecting the public once a juvenile has aged out of crime. "The American Academy of Child and Adolescent Psychiatry (AACAP) recommended juvenile offenders be eligible for parole after five years or reaching the age of twenty-five, and subsequent reviews should not exceed three years." Kallee Spooner &

Michael S. Vaughn, *Sentencing Juvenile Homicide Offenders: A 50-State Survey*, 5 Va J Crim L 130, 165-66 (2017). Allowing for earlier parole for people who committed crimes as juveniles would account for the age-crime curve and be consistent with the scientific research on adolescent brain development.

CONCLUSION

As courts and society learn the science of juvenile brain development, they reject long-term prison sentences for juveniles. The brain science establishes that extensive prison sentences for juveniles are generally ineffective and counter-productive towards the purposes of punishment.

This court should hold that juvenile lifetime imprisonment sentences, including those with the possibility of parole after 30 years of imprisonment, are unconstitutional under Article I, section 16, of the Oregon Constitution and under the Eighth Amendment to the United States Constitution.

DATED February 20, 2020.

Respectfully submitted,

/s/ Crystal Maloney

CRYSTAL MALONEY #164327
EMAIL CRYSTAL.S.MALONEY@GMAIL.COM
Attorney for *Amici Curiae*
Oregon Justice Resource Center
Oregon Criminal Defense Lawyers Association

CERTIFICATE OF COMPLIANCE
WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief length

I certify that (1) this *amici* brief on the merits complies with the word-count limitation in ORAP 5.05(2)(b)(i) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 3,958 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

/s/ Crystal Maloney
CRYSTAL MALONEY #164327
EMAIL CRYSTAL.S.MALONEY@GMAIL.COM
Attorney for *Amici Curiae*
Oregon Justice Resource Center
Oregon Criminal Defense Lawyers Association

CERTIFICATE OF FILING AND SERVICE

I certify that on February 20, 2020, I filed the original of this BRIEF IN SUPPORT OF RESPONDENT'S BRIEF ON THE MERITS BY *AMICI CURIAE* OREGON JUSTICE RESOURCE CENTER AND OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION with the State Court Administrator by the eFiling system.

I further certify that on February 20, 2020, I served a copy of the BRIEF on the following parties by electronic service via the eFiling system or via conventional e-mail service:

Ellen Rosenblum, OSB No.753239
Attorney General
Benjamin Gutman, OSB No. 160599
Solicitor General
OREGON DEPARTMENT
OF JUSTICE
1162 Court Street
NE Salem, Oregon 97301
Telephone: 503-378-4402
benjamin.gutman@doj.state.or.us

Attorneys for Petitioner-on-Review
State of Oregon

Ernest Lannet, OSB No. 013248
Chief Defender
Marc D. Brown, OSB No. 030825
Chief Deputy Defender
OFFICE OF PUBLIC DEFENSE
SERVICES
1175 Court Street NE
Salem, Oregon 97301
Telephone: 503-378-3349
marc.d.brown@state.or.us

Attorneys for Respondent-on-Review
Justin Alan Link

Sara Kobak, OSB No. 023405
SCHWABE, WILLIAMSON & WYATT, P.C.
1211 SW 5th Ave., Suite 1900
Portland, Oregon 97204
Telephone: 503-222-9981
skobak@schwabe.com

Attorney for Amicus Curiae ACLU of Oregon

Steven M. Watt, pro hac vice
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broadway St., 18th Floor
New York, New York 10004
Telephone: 212-519-7870
swatt@aclu.org

Attorney for Amicus Curiae American Civil Liberties Union Foundation

Andy Simrin, OSB No. 914310
ANDY SIMRIN PC
405 NW 18th Avenue
Portland, Oregon 97209
Telephone: 503-265-8940
andysimrin@oregonappeals.net

Attorney for Amicus Curiae Seth Edwin Koch

Kelly Simon, OSB No. 154213
ACLU FOUNDATION OF OREGON
P.O. Box 40585
Portland, Oregon 97240
Telephone: 503-444-7015
ksimon@aclu-or.org

Attorney for Amicus Curiae ACLU of Oregon

Angela Sherbo, OSB No. 824472
Christa Obold Eshleman, OSB No. 043801
YOUTH, RIGHTS & JUSTICE
1785 NE Sandy Blvd., Suite 300
Portland, Oregon 97232
Telephone: 503-232-2540
sherboangela@gmail.com
christa.oe@youthrightsjustice.org

Attorney for Amicus Curiae Youth, Rights & Justice

/s/ Crystal Maloney
CRYSTAL MALONEY #164327
EMAIL CRYSTAL.S.MALONEY@GMAIL.COM
Attorney for *Amici Curiae*
Oregon Justice Resource Center
Oregon Criminal Defense Lawyers Association